

District High Schools—Tax Levy—Duty of County Commissioners.

It is mandatory upon the Board of County Commissioners, upon being advised by the Trustees of the several school districts maintaining high schools of the amount required for maintenance, there being no county high school, to levy a tax not exceeding three mills upon the taxable property in the county sufficient to raise the total amounts required by such school districts.

August 2, 1918.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

Dear Miss Trumper:

You have requested my opinion upon the question of whether or not the Board of County Commissioners in a county not having a county high school has any right to use its own discretion in regard to the amount of funds it shall raise as a county tax for the support of high schools in the county, when the Board has been advised by the trustees of the several school districts as to the amount of funds required for the support of such high schools.

Section 1 of Chapter 105 of the 1917 Session Laws provides as follows:

"In any county not maintaining a county high school but in which one or more districts maintain high school classes * * * a special tax, not exceeding three mills on the dollar of taxable property in the county, *shall* be made for the benefit of such schools. When such levy is to be made the Chairman of the Board of Trustees in each school district * * * shall * * * recommend and advise the Board of County Commissioners as to the amount of money required, and the Board of County Commissioners *shall* thereupon fix such a levy, not exceeding three mills, as will raise sufficient money to meet the expenses of such accredited high schools for maintenance during the ensuing school year."

Section 2108 of the School Law, relating to a tax for county high school purposes, provides that the Board of County High School Trustees shall make an estimate of the amount of funds needed and shall present to the Board of County Commissioners a certified estimate of the rate of tax required to raise the amount desired for such purposes, and the Board of County Commissioners *must* levy such tax as other county taxes are levied. In *Panchot v. Leet*, 50 Mont. 314; 146 Pac. 927, Mr. Justice Sanner, in delivering the opinion of the Court, said:

"It is indisputable that the Board of County Commissioners has no power to make, of its own motion, a levy of taxes for county high school purposes. The establishment of county high schools, the maintenance of them, and the erection of

buildings therefor, are governed wholly by the provisions of Chapter 76, Laws of 1913, from which it is perfectly clear that the initiative in the matter of raising funds lies wholly with the Board of High School Trustees. The latter, however, are authorized to estimate 'the amount of funds needed for building purposes' and 'the rate of tax required to raise' such amount; and, when this has been properly done and certified to the County Commissioners, a levy *must* be made."

In *State v. Lakeside Land Co.*, 71 Minn. 283, 73 N. W. 970, Mr. Justice Mitchell said:

"School districts, like towns and cities, are territorially, but in no other sense, parts of the county in which they are situated. According to the general policy of our laws, they are, as quasi municipal corporations, and for the purposes for which they are created, co-ordinate with, and not subordinate to, the counties in which they are situated. The counties are created for certain purposes, and these other quasi municipalities for entirely different purposes. Each, within its own particular sphere, manages its own affairs, exempt from the control or supervision of the other, unless otherwise expressly provided by statute. They levy their own taxes and expend them for their own purposes, although, for reasons of convenience and economy, the county officials are generally used as mere ministerial agents to extend the taxes on the tax lists and collect them. They all levy their own taxes in the sense of voting them or determining their amount; but having no machinery of their own for their collection they are required to certify their action to the county auditor, whose duty it is to extend them on the tax books as part of the taxes for the current year, and thereafter the county treasurer collects them, the same as other taxes, and pays them over to the municipality to which they belong.

"The word 'levy' has different meanings, according to the object to which it is applied. As applied to taxes, it sometimes means to raise, to exact by authority of government, or to determine by vote the amount of tax to be raised. It is in this sense that towns, cities and school districts levy taxes. In other cases it is used with reference to the mere ministerial or executive acts of extending them on the tax books, and collecting them. Our own statutes contain numerous instances of the use of the word in these different senses.

* * * When the statute provides that school taxes shall be levied in the same manner and by the same officers as county taxes are levied and collected, it has reference merely to the machinery and agencies by which such taxes shall be extended on the tax books and collected."

It therefore appears to me that when the chairman of the Board of Trustees in each school district maintaining duly accredited high schools, has presented to the Board of County Commissioners a certificate or statement, showing the amount of money required for the

maintenance of such high school, it is then mandatory upon the Board of County Commissioners to fix and levy a tax not exceeding three mills, sufficient to raise the total amount required. Such taxes are levied and collected as other county taxes, and are apportioned by the county superintendent to the several school districts maintaining duly accredited high school classes. The County Commissioners exercise no discretion in the matter, but simply make a mathematical calculation of the rate of tax which it is necessary to levy upon the taxable property of the county to produce the amount required to maintain such high school classes, as determined by the trustees of such school districts.

Respectfully,

S. C. FORD,

Attorney General.